

ST 01-0207-GIL 09/28/2001 EXEMPT ORGANIZATIONS

Organizations that make application to the Department and are determined to be exclusively charitable, religious, or educational receive a tax exemption identification number. See 86 Ill. Adm. Code m130.2007. (This is a GIL.)

September 28, 2001

Dear Xxxxx:

This letter is in response to your letter dated September 11, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

As per our conversation of Sept. 11, 2001, we are a contractor for AAA. We make and refurbish pews and wall sound panels, both here in Il. and other states. We have a supplier that continues to charge us tax on the materials that will be permanently affixed to the real estate owned by the church. We have given them copy of 130.2075(d) but they said it dose not apply to us. Please give us a letter we can show the supplier

Please be advised persons who take tangible personal property and permanently affix it to real estate in Illinois act as construction contractors and incur Use Tax liability on their cost price of tangible personal property they physically incorporate into realty. They owe Use Tax because they are considered the end users of the materials they take off the market to permanently affix to real estate, G. S. Lyon & Sons Lumber & Mfg. Co. v. Department of Revenue, 23 Ill.2d 180 (1961). See the enclosed copy of 86 Ill. Adm. Code 130.1940. When the purchasing construction contractor (whether he is the prime contractor or the subcontractor) buys the item that he will convert into real estate in finished form, the tax base is what such construction contractor pays for the item. When contractors buy building materials they will incorporate into real estate from suppliers not registered to collect Illinois tax, the contractors must self-assess the Use Tax and pay it directly to this Department.

On the other hand, construction contractors act as retailers and incur Retailers' Occupation Tax liabilities when they sell items over-the-counter, or they sell items that remain tangible personal property when installed.

Organizations that qualify as exclusively religious, charitable, or educational or as a governmental body can apply to the Illinois Department of Revenue to obtain tax exemption identification numbers ("E" numbers). These numbers establish that the Department recognizes said organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes. Sales to governmental bodies are subject to tax unless the governmental body has obtained an active "E" number from the Department.

As noted above, because contractors are generally considered to be the end users of tangible personal property they permanently incorporate into real estate they owe the tax upon their purchases. However, contractors who physically incorporate tangible personal property into real estate owned by holders of "E" numbers can purchase such property tax-free by providing their suppliers with the certification described in 86 Ill. Adm. Code 130.2075(d), as well as the "E" number of the group into whose real estate that property will be incorporated. The suppliers should retain this information in order to document the tax-exempt sale. Section 130.2075(d)(4) states that:

"A supplier claiming exemption hereunder shall have among his records a certification from the purchasing contractor stating that his **purchases are for conversion into real estate** under a contract with a church, charity, school or governmental body, identifying the church, charity, school or governmental body that is involved by name and address and stating on what date his contract was entered into. The supplier shall also have among his records the active exemption number issued by the Department to the organization for which the purchasing contractor is acting. (emphasis added)"

Please be advised that the words "purchases are for conversion into real estate" mean purchases of tangible personal property by a construction contractor who will affix such property to a building structure so that it is permanently incorporated into that structure as an integral part thereof. Normal examples of qualifying building materials are lumber, steel beams, bricks and roof shingles. Other items that can be permanently installed into a building structure include windows, insulation, doors, plumbing systems, water heaters, pipes, sinks and faucets. See 86 Ill. Adm. Code 130.1940, enclosed. As a general proposition, the Department would consider pews and sound panels to be permanently affixed to a church's building structure.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.